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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,202	11/01/2005	Yuri Shefler	2005-1030	9618

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EXAMINER	
STULII, VERA	
ART UNIT	PAPER NUMBER
1794	
MAIL DATE	DELIVERY MODE
06/25/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/530,202	SHEFLER, YURI	
	Examiner	Art Unit	
	VERA STULII	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *10-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *10-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *02/04/08*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The supplemental reply filed on 03/14/2008 was not entered because supplemental replies are not entered as a matter of right except as provided in 37 CFR 1.111(a)(2)(ii). The supplemental reply is clearly not limited to:

(A) Cancellation of a claim(s);

(B) Adoption of the examiner suggestion(s);

(C) Placement of the application in condition for allowance;

(D) Reply to an Office requirement made after the first reply was filed;

(E) Correction of informalities (e.g., typographical errors); or

(F) Simplification of issues for appeal.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

However, the limitations recited in claims 1-3 are not supported by Applicant's foreign priority document. Therefore claims 1-3 are not entitled to the benefit of the filing date of a prior application filed in a foreign country (Latvian paten application P-02-179 filed October 3, 2002).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bobryshev (RU 2,175,010) in view of Jamnikov (RU 2,044,045).

In regard to claims 10-17, Bobryshev discloses a method of making vodka comprising the step of preparing an aqueous-spirituous solution with proof value 40% using rectified ethyl alcohol "LUKS" and purified drinking water treated by reverse osmosis (Abstract). In regard to claim 13, all method steps disclosed by Bobryshev appear to be performed at room temperature. In regard to claims 10 and 14, Bobryshev discloses that vodka contains extract of flax seeds (Abstract). In regard to claims 14 and 16, Bobryshev discloses that an aqueous-spirituous solution is purified with activated carbon by its passing through carbon-cleansing battery followed by vodka feeding into finishing tank where a mixture of fructose and ascorbic acid dissolved preliminary in treated water is added (Abstract). Bobryshev discloses that vodka is further filtered (Abstract). Bobryshev discloses preparing vodka with improved organoleptic properties and nutrient value due to use of biologically active complex of flax seeds (Abstract). Bobryshev discloses that biologically active complex of flax seeds forms pleasant aroma-forming complex with ethyl alcohol esters and leads to formation of very mild and pleasant taste and typical vodka aroma (Abstract). Bobryshev discloses that drinking water having hardness less than 0.1 mole/m^3 according to State Standard 2874-82 is

subjected to reverse osmosis (page 3 col. 2 lines 55-57). In summary, Bobryshev discloses a process for preparing vodka comprising the steps of mixing water, neutral spirit (rectified ethyl alcohol "LUX") and flax seed extract; subjecting this mixture to activated carbon filtration; adding sweetening and flavoring agents; subjecting flavored mixture to additional filtration (Page 3 col. 2 lines 32-42). Bobryshev discloses that "[f]or production of 1000 dal of vodka "SADKO" components are used in the following ratio: fructose, 5.5-6.5 kg; ascorbic acid, 0.04-0.06 kg; flax an aqueous- -spirituous infusion of the 1-st and the 2-d blend, 3.5-4.5 l; rectified ethyl alcohol "LUKS" and water treated by reverse osmosis, the balance, to obtain the blend value proof 40%" (Abstract).

Jamnikov discloses a process for preparing vodka comprising the steps of mixing purified water with rectified ethyl alcohol "LUX"; filtering aqueous-spirituous mixture; cooling filtered mixture to -4°C; maintaining cooled mixture at this temperature for 8 hours; further filtering on membrane microfilters; natural warming of the mixture to an ambient temperature; bottling (Abstract). Jamnikov also discloses that cooling aqueous-spirituous mixture leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka (page 3 col. 1 lines 50-54). Jamnikov also discloses purification of water in three stages (Abstract). Jamnikov discloses that on the third stage of water purification water alkalinity is 0.1 mg (page 3 col. 2 lines 17-21). In regard to claim 17, Jamnikov discloses that using microfilters with an optimal pore size of 20 mkm and 0.45 mkm leads to production of crystal clear vodka having high physicochemical and organoleptic properties (page 3 col. 2 lines 30-35).

In regard to claims 10 and 11, Jamnikov discloses the following amounts of impurities in resulting vodka (mg per liter):

Acetic aldehyde	0.44
Propionic aldehyde	traces
Methyl acetate	1.01
Ethyl acetate	0.5
Methyl propionate	traces
Ethyl propionate	traces
Methanol	42.5
Propyl alcohol	traces
Iso-bytyl alcohol	traces
Iso-amyl alcohol	traces

Bobryshev is silent about cooling aqueous-spirituous mixture after filtration. Since Bobryshev discloses production of vodka by mixing purified water with rectified ethyl alcohol "LUX" and further filtering, and Jamnikov discloses production of vodka by mixing purified water with rectified ethyl alcohol "LUX", cooling the mixture and further filtering, one of the ordinary skill in the art would have been motivated to modify disclosure of Bobryshev and to cool aqueous-spirituous mixture and to maintain it at this temperature for 8 hours after filtration in order to improve organoleptic and physical/chemical properties of vodka as disclosed by Jamnikov. One of ordinary skill in the art would have been motivated to do so, since Jamnikov specifically discloses elimination of impurities in vodka by cooling aqueous-spirituous mixture and maintaining it at this temperature for 8 hours after filtering. One of ordinary skill in the art would have been motivated to do so, since method disclosed by Bobryshev is also directed to

removal of impurities and therefore improvement of organoleptic properties of vodka. It was also known that vodka is often stored in the freezer to be kept cold, therefore to modify Bobryshev et al and to lower the freezing temperatures would have been obvious. One of ordinary skill in the art would also have been motivated to modify Bobryshev et al and to lower the freezing temperature, since freezing temperature is seen to be a result effective variable.

Regarding claims 10 and 11, it is noted that bicarbonate ion is a principle alcaline constituents in most of the water supplies. Regarding claims 10 and 11, although the references do not specifically disclose every possible quantification or characteristic of its product, including fusel oil content, sodium bicarbonate, etc, the fusel oil content, sodium bicarbonate and content of other substances would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The combination of references discloses the same starting materials and methods as instantly (both broadly and more specifically) claimed, and thus one of the ordinary skill in the art would recognize that the fusel oil and sodium bicarbonate content, among many other characteristics of the referenced product, would have been a resultant property of the product disclosed therein. The Patent Office does not possess the facilities to make and test the referenced product, and as reasonable reading of the teachings of the reference has been applied and does anticipate the instant claims, the burden thus shifts to applicant to demonstrate otherwise.

Regarding claim 17, since Jamnikov teaches production of crystal clear vodka having high physicochemical and organoleptic properties by employing series of membrane microfilters, one of the ordinary skill in the art would have been motivated to modify disclosure of Bobryshev and to employ filtration using series of microfilters in order to ensure that vodka ready for bottling is crystal clear and has high physicochemical and organoleptic properties as taught by Jamnikov.

Response to Arguments

The rejection of claims 1-9 has been withdrawn due to the claims' amendments filed February 4, 2008.

Applicant's arguments filed February 4, 2008 have been fully considered but they are not persuasive. In regard to Applicants' argument that: "[i]t is believed that these low amounts of impurities in combination with the addition of flax seed extract and bicarbonate as set forth in the claimed invention, results in the desired product. None of the cited documents, alone or in combination, suggests the composition of claim 10" (pages 6-7 of the Replay filed on February 4, 2008). Examiner respectfully disagrees for the following reasons:

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As stated in the Office action above:

Bobryshev discloses a process for preparing vodka comprising the steps of mixing water, neutral spirit (rectified ethyl alcohol "LUX") and flax seed extract; subjecting this mixture to activated carbon filtration; adding sweetening and flavoring agents; subjecting flavored mixture to additional filtration (Page 3 col. 2 lines 32-42). Bobryshev discloses that "[f]or production of 1000 dal of vodka "SADKO" components are used in the following ratio: fructose, 5.5-6.5 kg; ascorbic acid, 0.04-0.06 kg; flax an aqueous- -spirituous infusion of the 1-st and the 2-d blend, 3.5-4.5 l; rectified ethyl alcohol "LUKS" and water treated by reverse osmosis, the balance, to obtain the blend value proof 40%" (Abstract). Jamnikov discloses a process for preparing vodka comprising the steps of mixing purified water with rectified ethyl alcohol "LUX"; filtering aqueous-spirituous mixture; cooling filtered mixture to -4°C; maintaining cooled mixture at this temperature for 8 hours; further filtering on membrane microfilters; natural warming of the mixture to an ambient temperature; bottling (Abstract). Jamnikov also discloses that cooling aqueous-spirituous mixture leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka (page 3 col. 1 lines 50-54). Jamnikov also discloses purification of water in three stages (Abstract). Jamnikov discloses that on the third stage of water purification water alkalinity is 0.1 mg (page 3 col. 2 lines 17-21). In regard to claim 17, Jamnikov discloses that using microfilters with an optimal pore size of 20 mkm and 0.45 mkm leads to production of crystal clear vodka having high physicochemical and organoleptic properties (page 3 col. 2 lines 30-35). Jamnikov also discloses low amounts of impurities in resulting vodka. Since Bobryshev discloses production of vodka by mixing

purified water with rectified ethyl alcohol "LUX" and further filtering, and Jamnikov discloses production of vodka by mixing purified water with rectified ethyl alcohol "LUX", cooling the mixture and further filtering, one of the ordinary skill in the art would have been motivated to modify disclosure of Bobryshev and to cool aqueous-spirituous mixture and to maintain it at this temperature for 8 hours after filtration in order to improve organoleptic and physical/chemical properties of vodka as disclosed by Jamnikov. One of ordinary skill in the art would have been motivated to do so, since Jamnikov specifically discloses elimination of impurities in vodka by cooling aqueous-spirituous mixture and maintaining it at this temperature for 8 hours after filtering. One of ordinary skill in the art would have been motivated to do so, since method disclosed by Bobryshev is also directed to removal of impurities and therefore improvement of organoleptic properties of vodka. Regarding claims 10 and 11, it is noted that bicarbonate ion is a principle alkaline constituents in most of the water supplies. Further in this regard it is noted that combination of Jamnikov and Bobryshev discloses the same or similar initial ingredients, method steps and conditions as recited by applicant: for example, water purified by osmosis, use alcohol "Lux", multiple filtrations, addition of flax extract, cooling for the same purpose as applicant, etc. Regarding claims 10 and 11, although the references do not specifically disclose every possible quantification or characteristic of its product, including fusel oil content, sodium bicarbonate, etc, the fusel oil content, sodium bicarbonate and content of other substances would have been expected to be in the claimed range absent any clear and convincing evidence and/or arguments to the contrary. The combination of references discloses the same starting

materials and methods as instantly (both broadly and more specifically) claimed, and thus one of the ordinary skill in the art would recognize that the fusel oil and sodium bicarbonate content, among many other characteristics of the referenced product, would have been a resultant property of the product disclosed therein. The Patent Office does not possess the facilities to make and test the referenced product, and as reasonable reading of the teachings of the reference has been applied and does anticipate the instant claims, the burden thus shifts to applicant to demonstrate otherwise.

Further in this regard, it is noted that, in response to applicant's argument that the references fail to show certain features of applicant's invention (*addition* of bicarbonate), it is noted that the features upon which applicant relies (i.e., *addition* of bicarbonate) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). No claim recites that bicarbonate *has been added* to the composition. As stated in the Office action above, it was well known in the art that bicarbonate ion is a principle alkaline constituents in most of the water supplies.

On page 7 of the Reply, applicant states that: [t]he vodka disclosed by BOBRYSHEV does not contain bicarbonate, nor does it disclose the low levels of impurities as recited in the claims. BOBRYSHEV merely discloses the use of rectified ethyl alcohol "LUKS" and drinking water as a starting material for vodka. Flax seed extract may be added as a flavor". In response to this argument, applicant is referred to the response to arguments as stated above.

In regard to applicant's argument that "JAMNIKOV does not feature a deep freezing step beyond -10°C" (Page 7 of the Reply), it is noted that Jamnikov discloses that freezing aqueous-spirituous mixture to -4° C leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka (page 3 col. 1 lines 50-54). It also known that vodka is often stored in the freezer to be kept cold, therefore to modify Bobryshev et al and to lower the freezing temperatures would have been obvious. One of ordinary skill in the art would also have been motivated to modify Bobryshev et al and to lower the freezing temperature, since freezing temperature is seen to be a result effective variable.

On page 8 of the Reply, Applicant states that "JAMNIKOV does not feature a deep-freezing step following a pre-treatment step of the water-alcohol mixture". In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It is noted that Jamnikov is relied upon as a teaching of the step of freezing aqueous-spirituous mixture to -4° C that leads to formation of precipitates that significantly effect (lower) organoleptic and physicochemical properties of vodka (page 3 col. 1 lines 50-54), which therefore increases organoleptic properties of the final product. Bobryshev discloses that an aqueous-spirituous solution is purified with activated carbon by its passing through carbon-cleansing battery followed by vodka feeding into finishing tank where a

mixture of fructose and ascorbic acid dissolved preliminary in treated water is added (Abstract). Bobryshev discloses that vodka is further filtered (Abstract).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

VS